

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

DEBORAH H. HARDIN

PLAINTIFF

v.

No. 1:97cv213-D-D

CATERPILLAR, INC.

DEFENDANT

OPINION

Presently before the court is “Defendant’s Motion for Partial Summary Judgment.” After considering the motion, the court finds that it should be granted as to the Plaintiff’s claim under the Americans with Disabilities Act because the Plaintiff cannot show that the Defendant suffered from a disability under the terms of that legislation. As to the remainder of the Plaintiff’s claims, the court finds that the motion for summary judgment should be denied.

Brief Factual and Procedural Background

The Plaintiff Deborah Hardin commenced her employment with the Defendant Caterpillar, Inc., in 1994. In the late summer and fall of 1995, Ms. Hardin took a leave of absence from her employment due to pregnancy and childbirth. In early 1996, Ms. Hardin took another leave of absence to undergo surgery to remove a tumor on her thyroid gland. Later that year she missed a few additional days of work because of other medical conditions. In February of 1997, Ms. Hardin missed a number of days due to conditions related to a second pregnancy. During her absence, Ms. Hardin consulted a physician, who advised her not to return to work until late March 1997.

After a number of Ms. Hardin’s absences in 1996, Ms. Hardin’s supervisors at Caterpillar issued her written warnings for absenteeism. During Ms. Hardin’s absence in 1997, a Caterpillar

employee telephoned Ms. Hardin at home to request documentation regarding her absence. On March 18, 1997, Caterpillar terminated Ms. Hardin's employment effective February 25, 1997. In the termination letter Caterpillar explained that it was terminating Ms. Hardin's employment for "being absent from work without proper notification and approval"

On July 8, 1997, after exhausting her administrative remedies, Ms. Hardin filed the present action against Caterpillar. In the complaint, Ms. Hardin claimed that Caterpillar's actions violated the Americans with Disabilities Act, the Pregnancy Discrimination Act, and the Family and Medical Leave Act.

Discussion

Caterpillar seeks dismissal of Ms. Hardin's claims under the Pregnancy Discrimination Act and the Americans with Disabilities Act (ADA). Since the court only dismisses Ms. Hardin's claim under the ADA, the court shall only discuss that claim.

"To make out a prima facie case of discrimination under the ADA [a plaintiff] must show that (a) [she] has a disability; (b) [she] is a qualified individual for the job in question; and (c) an adverse employment decision was made because of [her] disability." Hamilton v. Southwestern Bell Telephone Co., 136 F.3d 1047, 1050 (5th Cir. 1998). The ADA defines the term "disability" as

- (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment.

42 U.S.C. § 12102(2). The applicable regulations state that a "physical or mental impairment" is

- (1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech

organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or
(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

29 C.F.R. § 1630.2(h). The regulations further state that “conditions, such as pregnancy, that are not the result of a physiological disorder are [] not impairments.” 29 C.F.R. Pt. 1630, App. § 1630.2(h) at 395 (1994) (emphasis added); see also Cummings v. Circus Circus Mississippi, Inc., No. 2:96cv93-B-B, 1997 WL 560870, at *4 (N.D. Miss. 1997) (“[P]regnancy and related medical conditions are not considered to be a disability under the ADA.”) (citing Villarreal v. J.E. Merit Constructors, Inc., 895 F. Supp. 149, 152 (S.D. Tex.1995)). As another district court explained,

[t]he EEOC’s “interpretive guidance” on Title I of the ADA states, with respect to the determination of whether an individual has a “physical or mental impairment,” that “[i]t is important to distinguish between conditions that are impairments and physical, psychological, environmental, cultural and economic characteristics that are not impairments.” 29 C.F.R. Pt. 1630, App. § 1630.2(h) at 395 (1994).

Tsetseranos v. Tech Prototype, Inc., 893 F. Supp. 109, 119 (D.N.H. 1995).

The gist of Ms. Hardin’s claim under the ADA is that Caterpillar discriminated against her because of her pregnancy. To raise a claim under the ADA, Ms. Hardin must first show that she has a disability. An integral part of this burden is to show that she has a physical or mental impairment. Since pregnancy is not an impairment under the ADA, Ms. Hardin must show that Caterpillar regarded Ms. Hardin as having “such an impairment.”¹ See 42 U.S.C. § 12102(2)(C); see also 29 C.F.R § 1630.2(l) (providing that section 12102(2)(C) includes situation where plaintiff has no impairment “but is treated by a covered entity as having a substantially limiting impairment.”) (emphasis added). On this point, Caterpillar argues that “Plaintiff’s ADA claim

¹Ms. Hardin does not appear to argue that she had a disability because she had “a record of such an impairment.” See 42 U.S.C. § 12102(2)(B).

should be dismissed because Plaintiff cannot establish Defendant regarded her as anything other than pregnant.” Defendant’s Memorandum in Support of Motion for Partial Summary Judgment, p. 4. Ms. Hardin argues, on the other hand, that she “has produced very substantial evidence that Defendant ‘regarded’ her as being unable to work.” Plaintiff’s Brief in Opposition to Defendant’s Motion for Partial Summary Judgment, unnumbered p. 18. However, whether Caterpillar regarded Ms. Hardin as being unable to work is not the pertinent question. The pertinent question is whether Caterpillar regarded Ms. Hardin as having a physical or mental impairment that substantially limited one or more of her major life activities. See 42 U.S.C. § 12102(2). The answer to this question, the court finds, is that Caterpillar did not regard Ms. Hardin as having an impairment at all.

In particular, Ms. Hardin offers the following evidence:

1. Ms. Hardin described an exchange between herself and Jeff Vataloro, one of her supervisors, which occurred during Ms. Hardin’s first pregnancy in 1995: “He came up to me and told me he understood I was having difficulty with my pregnancy, and told me that perhaps I didn’t need to be at that -- be there if I couldn’t do my work and be pregnant.” Deposition of Deborah H. Hardin, p. 32.
2. Ms. Hardin described an exchange between herself and Paul Strang, Caterpillar’s Human Resources Director at the facility where Ms. Hardin worked. The exchange took place a few days after the exchange with Mr. Vataloro. Ms. Hardin described the exchange with Mr. Strang as follows: “[H]e approached me and started questioning me about my – about my problems with my pregnancy, about my job, about his conversation with Vataloro. . . . [He said] [i]f being pregnant was keeping me from doing my job, if – maybe I needed to

talk to my doctor and see about a leave.” Id. at 35. Ms. Hardin stated that during this exchange Mr. Strang instructed Ms. Hardin to inform someone when she used the restroom, and that another Caterpillar employee Nicky Johnson later repeated this instruction to Ms. Hardin. Id. at 40.

3. Ms. Hardin described an exchange between herself and Dale Kendrick, one of her supervisors, which occurred after Ms. Hardin learned of her second pregnancy in February 1997:

[H]e asked me were we going to have the same problems with me this pregnancy that we had in the previous pregnancy And then later on – he went on to say that I worked in a team environment, and that as a team player it was imperative that I be able to do my job, and that me being pregnant – you know, if that was going to be a problem with me doing my job, then there was going to be a problem. But it was imperative that I pull my end of the team.

Id. at 87.

4. Ms. Hardin stated that she telephoned one of her supervisors during the second pregnancy to inform Caterpillar that she would have to miss work because she had “severe morning sickness.” Id. at 125. Russell Moore, one of Ms. Hardin’s coworkers, said that the supervisor later “snickered and laughed” about the telephone call. Deposition of Russell Moore, p. 10.
5. Ms. Hardin alleged in her memorandum of authorities that Caterpillar “called the doctor seeking information about ‘disability forms’” Plaintiff’s Brief in Opposition to Defendant’s Motion for Partial Summary Judgment, unnumbered p. 19.

None of this evidence shows that Caterpillar regarded Ms. Hardin as suffering from an impairment under the ADA. It only shows that Caterpillar regarded Ms. Hardin as being

pregnant, a situation which is not an impairment. Even Ms. Hardin's unsupported² allegation that Caterpillar telephoned Ms. Hardin's physician to request "disability forms" does not defeat Caterpillar's motion for summary judgment; no reasonable juror could conclude that Caterpillar requested the forms for any reason other than to obtain documentation regarding Ms. Hardin's absences due to her pregnancy. Therefore, even though Caterpillar might have regarded Ms. Hardin's pregnancy as a situation which limited her ability to work, Ms. Hardin cannot show that Caterpillar regarded Ms. Hardin as having an impairment under the terms of the ADA.

To be sure, Ms. Hardin also offers evidence that her supervisors gave her written warnings about absenteeism (1) in early 1996 when Ms. Hardin missed work because she underwent an operation to remove a tumor on her thyroid gland and (2) later that year when she missed work because she saw a physician about fatigue and blood sugar problems. Deposition of Deborah H. Hardin, pp. 58, 69-70. Ms. Hardin also described an exchange between herself and Mr. Kendrick about these absences: "He told me that I needed to use my vacation days to go to the doctor. . . . He told me that with my pay continuation that when I missed they would have to pay me and that was costly." *Id.* at 72. However, Ms. Hardin fails to show that her thyroid problem and other conditions in 1996 were more than temporary, non-chronic impairments of short durations. *See Pryor v. Trane Co.*, 138 F.3d 1024, 1026 (5th Cir. 1997) ("[T]emporary, non-chronic impairments of short duration, with little or no longer term or permanent impact, are

²Ms. Hardin failed to cite what portion of the record supports this allegation. The court has no duty to scour the record on behalf of Ms. Hardin and locate support for the allegation. *See Jones v. Sheehan, Young & Culp, P.C.*, 82 F.3d 1334, 1338 (5th Cir. 1996) ("Rule 56, therefore, saddles the non-movant with the duty to 'designate' the specific facts in the record that create genuine issues precluding summary judgment, and does not impose upon the district court a duty to survey the entire record in search of evidence to support a non-movant's opposition.").

usually not disabilities.”) (citing 29 C.F.R. § 1630, App., § 1630.2(j)); Oswalt v. Sara Lee Corp., 889 F. Supp. 253, 257 (N.D. Miss. 1995) (“[T]he ADA was never intended to extend to persons suffering from temporary conditions”). Therefore, as a matter of law, Ms. Hardin cannot raise a claim under the ADA because of those conditions.

In sum, considering the evidence to which Ms. Hardin directs the court’s attention, the court finds that Ms. Hardin fails to raise a genuine issue as to whether Caterpillar regarded her as having an impairment under the ADA. Therefore, the court shall grant Caterpillar’s motion for summary judgment as to Ms. Hardin’s ADA claim.

Conclusion

The court finds that Caterpillar’s motion for summary judgment should be granted as to Ms. Hardin’s claim under the ADA because Ms. Hardin cannot show that Caterpillar regarded her as having a physical or mental impairment. As to the remainder of Ms. Hardin’s claims, the court finds that the motion for summary judgment should be denied. Caterpillar has failed to show that it is entitled to a judgment as a matter of law as to those claims. In any event, the court exercises its discretion to allow Ms. Hardin’s claims, except her ADA claim, to proceed to trial. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986) (“Neither do we suggest . . . that the trial court may not deny summary judgment in a case where there is reason to believe that the better course would be to proceed to a full trial.”).

A separate order in accordance with this opinion shall issue this day.

This the ____ day of October 1998.

United States District Judge

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No. 1:97cv213-D-D

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DEFENDANT

ORDER GRANTING IN PART AND DENYING IN PART
MOTION FOR SUMMARY JUDGMENT

Pursuant to a memorandum opinion issued this day, the court finds that

- (6) the Defendant's motion for summary judgment is GRANTED as to the Plaintiff's claim under the Americans with Disabilities Act;
- (7) the Plaintiff's claim under the Americans with Disabilities Act is DISMISSED; and
- (8) the Defendant's motion for summary judgment is DENIED as to the remainder of the Plaintiff's claims.

All memoranda, depositions, affidavits and other materials considered by this court in ruling on this motion are hereby incorporated into and made a part of the record in this action.

SO ORDERED, this the ____ day of October 1998.

United States District Judge